

REMARKS

Claims 8-11 and 16-34 currently appear in this application. The Office Action of March 16, 2007, has been carefully studied. These claims define novel and unobvious subject matter under Sections 102 and 103 of 35 U.S.C., and therefore should be allowed. Applicant respectfully requests favorable reconsideration, entry of the present amendment, and formal allowance of the claims.

Amendments

The present amendment cancels claims 1 and 3-7 in favor of new claims 19-34. Support for claims 19 and 20 can be found in the specification as filed at page 4, paragraph 0059. Support for claims 21 and 22 can be found in the specification as filed at page 3, paragraph 0054 and page 4, paragraph 0059.

Rejections under 35 U.S.C. 112

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As the present amendment cancels claim 4, this rejection is now moot.

Art Rejections

Claims 1, 3-11 and 16-18 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious, over Miura et al., U.S. 5,959,088. The Examiner alleges that, since the crystallization process disclosed by the cited art is the same or closely related to the process for production of the claimed crystals, the claimed compounds have been inherently produced by the references' processes. The Examiner further alleges that Miura discloses in column 20, Example 20, subjecting Crystal form D anhydrate under humidifying conditions. The Examiner's position is that the claimed Crystal Form D hydrate would have been inherently formed in the Miura process.

This rejection is respectfully traversed. Miura does not specifically or clearly disclose that both an anhydrate and a hydrate exist regarding Crystal Form D in such a way that one skilled in the art would easily understand, the Examiner appears to rely on the applicant's disclosure in the rejection.

It should be emphasized that the inventors of the present application discovered for the first time that an anhydrate and a hydrate exist for Crystal Form D. It is respectfully submitted that it is inappropriate and

unjustified for the Examiner to reject the present claims by combining prior art and the present specification.

Furthermore, the conditions (80°C, 75%) for producing Crystal form D described in Example 11 of Miura is far different from those that would be adopted as a commercial method. The method of Example 11 of Miura is intended to examine the stability of a crystal. Therefore, even if one skilled in the art had only read Example 11, that person would not have easily recognized that Crystal Form D hydrate was formed.

It should also be noted that in Miura, when recrystallization was performed with ethyl acetate used as a solvent either alone or in admixture with water, there were obtained crystals (Crystal Form C and D) that differed from the product (Crystal form A) of recrystallization from a mixture of methanol and isopropanol as disclosed in Koga et al., JP 56873/1994.

Claims 8-11 and 16-18 recite Crystal forms G, namely, Crystal Form G1, Crystal +Form G2 and Crystal Form G3. These crystal forms have a specific X-ray diffraction pattern of 5.4°, 10.4°, 10.7° and 12.1°. These crystal forms are quite different from Crystal Forms A, C and D. Therefore, claims 8-11 and 16-18 are neither anticipated nor made obvious by the cited references.

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In view of the above, it is respectfully submitted  
that the claims are now in condition for allowance, and  
favorable action thereon is earnestly solicited.

Respectfully submitted,

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